

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

SHERRY L. AHLIN, )  
Plaintiff, ) 8:05CV447  
vs. ) ORDER  
JO ANNE B. BARNHART, )  
Commissioner of Social Security, )  
Defendant. )

This matter is before the court on Filing No. 1, the Notice of Removal filed by the defendant, the United States of America on behalf of Jo Anne B. Barnhart, Commissioner of Social Security. The defendant has attempted to remove this case from the Small Claims Court of Douglas County, Nebraska, where the plaintiff, Sherry L. Ahlin, originally filed the action. In Filing No. 1, the defendant asserts that it removed this action within 30 days of receipt of the plaintiff's initial pleadings, as required by 28 U.S.C. § 1446(b). However, the defendant has not served a copy of the Notice of Removal on the plaintiff, instead stating that the plaintiff has no listed address, and, thus, the defendant served the plaintiff at the Social Security Field Office in Omaha, Nebraska.

28 U.S.C. § 1446(d) states: "Promptly after the filing of such notice of removal of a civil action the defendant or defendants shall give written notice thereof to all adverse parties and shall file a copy of the notice with the clerk of such State court, which shall effect the removal and the State court shall proceed no further unless and until the case is remanded." Thus, the removal of this action is defective for lack of service of the Notice of Removal on the plaintiff pursuant to 28 U.S.C. § 1446(d). There is no reason to believe that the plaintiff will receive actual notice of the removal from the delivery of a copy of Filing No. 1 to the Social Security Field Office. In addition, the defendant cannot reasonably expect this court to issue any decisions with the foreknowledge that orders by the court will not reach the plaintiff.

Therefore, to avoid a remand of this action, counsel for the defendant, **by no later than October 7, 2005**, shall take whatever action may be required, including a visit to the Small

Claims Court of Douglas County, Nebraska, if necessary, to obtain the plaintiff's address and to file that information with this court. **See also** 28 U.S.C. § 1447(a): "In any case removed from a State court, the district court may issue all necessary orders and process to bring before it all proper parties whether served by process issued by the State court or otherwise."

**IT IS SO ORDERED.**

DATED this 26th day of September, 2005.

BY THE COURT:

s/Thomas D. Thalken  
United States Magistrate Judge